

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.187 OF 1996

1) Prabhakar Daulat Pawar	)	
Age : 29 years	)	
2) Baliram Shankar Pawar	)	
Age : 37 years	)	
Resident of Saudana,	)	
Taluka : Malegaon, Dist. Nasik	)	)..Appellants
		(Org.Accused)

Versus

The State of Maharashtra	)	)..Respondent
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Mr.S.U.Dhakephalkar for the Appellants.

Mrs.M.H.Mhatre APP for the Respondent/State.

Coram : R.S.MOHITE, J

Date : 23.11.2007.

Judgment :-

1. The appellants Prabhakar Daulat Pawar and Baliram Shankar Pawar (hereinafter referred to as "accused nos.1 & 2") prefer this appeal, impugning a judgment and order dated 7.3.1996 passed by the Addl.Sessions Judge, Malegaon in Sessions Case No.44 of 1989. By the impugned judgment and order accused no.1 was convicted for an offence punishable under Section 366 of Indian Penal Code and sentenced to suffer RI for 3 years and to pay fine of Rs.500/-, in default to suffer RI for one month. Accused

nos.1 & 3 were convicted for an offence punishable under Section 376 (2) (g) of the IPC and sentenced to suffer RI for 10 years each and to pay a fine of Rs.500/- each, in default to suffer RI for one month each. The Sessions Court acquitted accused no.1 for the offence punishable under Section 363 of the IPC. The prosecution was directed to file a separate charge-sheet against accused no.2 Subhash, who was absconding, as and when he was found. It was directed that the substantive sentences were to run concurrently and the benefit of set off was given to the accused.

2. The brief facts of the case are as under :-

(a) (PW 1) Pramila Ahire was a young girl aged between 17 to 19 years on the date of the incident which occurred on 30.4.1989. In her childhood she had been married to one Suresh but she returned to her paternal house two days after the marriage. On the date of the incident, she was residing with her mother Bhagabai at village Shriram-nagar in taluka Malegaon Dist. Nasik. The prosecutrix Pramila and her mother were residing alone in the house. (PW 2) Mohnabai Bagul was the grand mother of the prosecutrix. She resided in a nearby village called Takalipada. On 30.4.1989 Mohnabai went to the house of Bhagabai. While going back to Taklipada prosecutrix accompanied her. Pramila and Mohnabai

then went to the house of one Hiranman for watching a picture on television. After watching the picture they returned back at 8.00 P.M. On returning, they found accused no.1 and absconding accused no.2 who is described as a Madrasi sitting near the house of Mohnabai. Prabhakar and the Madrasi started igniting bidis. Mohnabai told them not to ignite bidi in the hut. Accused no.1 and Madrasi asked Mohnabai as to why a prostitute of Malegaon had been brought to her house. So saying, they pulled the prosecutrix and took her on a bicycle after threatening to throw her in a well in case she raised hue & cry. It appears that the Madrasi thereafter left the spot and on the road accused no.3 met them. Accused no.3 dragged the prosecutrix to the nearby field and raped her twice near the tree. After completing the act, accused no.3 left the place but accused no.1 dragged her to another field and committed forceful intercourse with her in the field. Accused no.1 was sleeping near her for the entire night and later in the morning he left the prosecutrix at the bus stand near village Saundane and went away. In the morning, the grand-mother of the prosecutrix, Mohnabai, went to the village of the prosecutrix and informed about the prosecutrix having been taken away to her mother Bhagabai. The grand-mother and mother of the prosecutrix went in search of the prosecutrix and found her lying near a nim tree, near bus stand of

Saundane. On seeing them the prosecutrix started crying. She informed Mohnabai that Prabhakar had raped her and then went to the Taluka police station and at 8.35 A.M., on 1.5.1989, the police recorded the FIR of the prosecutrix Pramila.

(b) After registering the crime, (PW 7) PI Deoram Sonawane seized the clothes on the person of the complainant under a panchanama (Exh.52). He thereafter went to the spot of the offence alongwith panchas and the complainant. He prepared a spot panchanama. Spot panchanama indicates that on one of the field he found a ladies nicker and on another field he found a button. The area these seizure were made was found to be trampled. He sent the prosecutrix for medical examination. On the same day he arrested accused nos.1 & 2 and after seizing their clothes, under panchanamas at Exhibit 53 in respect of accused no.1 and Exhibit 55 in respect of accused no.3, sent them for medical examination. Accused no.1 was medically examined at 6.10 P.M. on 1.5.1989 and accused no.3 was examined on 2.5.1989 at 8.55 p.m. The investigating officer also recorded the statements of various witnesses including people residing adjoining the house of Mohnabai. The investigating officer then the sent various articles seized to the C.A. After receipt of the C.A. report he filed the charge-sheet.

3. In due course, the case was committed to the court of Sessions and the trial commenced. At the trial, the prosecution examined 7 witnesses to bring home the guilt of the accused. (PW 1) Pramila Ahire was examined as the prosecutrix. Corroborative evidence was sought through the evidence of (PW 2) grand-mother Mohnabai Bagul and (PW 4) Bhagabai Gulab Sonwane, mother of the prosecutrix. (PW 3) Bhausahab Deore was examined as the panch for the seizure of the clothes of the prosecutrix and accused nos.1 & 2 to prove the panchanama of the scene of offence. (PW 5) Dr.Sahebrao Naval was examined as the medical officer who has examined the prosecutrix and the accused. (PW 6) Dr.Vasant Trambak Vaidya radiologist was examined to prove the age of prosecutrix and (PW 7) Suresh Sonawane was examined as the investigating officer.

4. The defence of both the accused was of total denial. After perusing the ocular and documentary evidence adduced by the prosecution, the trial Court passed the impugned judgment and order convicting the accused as aforesaid.

5. On behalf of the accused it was contended that Mohnabai had admitted that she had enmical relations with accused no.1. In her cross-examination she had admitted that a quarrel had taken place between her and accused Prabhakar since he had taken her radio

and at that time she had threatened Prabhakar to putting him behind the bar. He contended as far as accused no.1 was concerned, the medical evidence indicated that the Doctor has found smegma on his glans penis at the time of medical examination. That no injuries were found to have been inflicted on the body of Prabhakar. The medical evidence infact indicated that he had multiple painful ulcers on his glans penis. It was contended that it was highly unlikely that with such a condition he could have committed intercourse. It was contended that Mohnabai was present with the prosecutrix at the time when the FIR was lodged and there was a good possibility that Mohnabai could have persuaded the prosecutrix to add the name of accused no.1 as a person who had raped particularly as that she had admitted in her own evidence that she had threatened to send him to jail. He contended that as far as accused no.1 was concerned, the blood and semen found on the pettycoat of the prosecutrix could not be connected with accused no.1 as his blood and semen could not be typed. He contended that (PW 4) Bhagabai Sonawane did not state in her evidence about the disclosure by Pramila, to her, about the commission of rape by Prabhakar. He further contended that the story of the prosecutrix itself was not fully corroborated in so far as rape by accused no.1 was concerned. In her deposition she had talked accused no.1 raping her once and the

story in the FIR was that accused no.1 raped her twice. In her evidence prosecutrix talked about Prabhakar sleeping with her for the whole night. This was found to be improvement in the police statement. As far as accused no.3 was concerned, the Advocate for the accused stated that he should also be given benefit of doubt as semen of 'B' group could have belonged to some other person, the evidence of the prosecutrix was unbelievable. The conduct of the grand mother was un-natural as she has not raised any hue and cry on the night of 30.4.1989.

6. On behalf of the prosecution it was contended by the learned APP that the reasoning of the trial Court was cogent and correct. Pramila was a young girl aged between 17 & 19 years at the date on the incident. Even assuming that (PW 2) Mohnabai Bagul had enmical relations with accused no.1, there was no reason for the prosecutrix Pramila (PW 1) to falsely involve accused no.1. She contended that the evidence pertaining to the kidnapping of Pramila was consistent, corroborated by the FIR and also corroborated by the evidence of (PW 2) Mohnabai Bagul. The evidence indicated that the prosecutrix was immediately taken away by accused no.1 and the Madrasi on a bicycle, which indicated a plan. That accused no.3 was also waiting at deserted spot on the road which also indicated that the whole purpose

of taking away Pramila for subjecting her to intercourse. She contended that there was no merit in the appeal and the same was required to be dismissed.

7. I have perused the entire evidence. In my view, in so far as accused no.1 is concerned, the evidence of (PW 1) prosecutrix Pramila and (PW 2) Mohnabai about Prabhakar and his madrasai friend taking away Pramila from the house of Mohnabai at the night of 30.4.1989 is consistent. The evidence indicates accused no.1 and his friend took her away from the spot by telling the grand-mother that the prostitute from Malegaon should be taken away. Record indicates that after accused no.3 was waiting at a place along the road and all these facts indicate that the purpose of taking away the prosecutrix was to subject her to intercourse. The version given by the prosecutrix in this regard is also corroborated by her own FIR which was filed on the next morning i.e. 1.5.1989 at 8.35 A.M. Accused no.1 was identified by the prosecutrix as the person who took her away from the house of Mohnabai. I therefore, find no fault with the conviction and sentence imposed upon accused no.1 for committing an offence under Section 366 of IPC.

8. In so far as offence under Section 376 (2) (g) said to have been committed by Prabhakar is

concerned, there are several lacunas in the prosecution case which lead me to give him the benefit of doubt. These lacunas can be listed as under :-

(i) that (PW 2) Mohnabai had admitted in her cross-examination that 15 days prior to the incident, a quarrel had taken place between her and accused no.1 Prabhakar because Prabhakar had taken away her radio. Mohnabai admitted that at that time she threatened to put him behind bars.

(ii) That admittedly on the morning of 1.5.198 Mohnabai found Pramila sitting under a tree at village Soundane. Mohnabai therefore, was with Pramila right from village Soundane upto the Taluka police station and had ample opportunity to persuade Pramila to involve accused no.1 who admittedly had enmical relations with her.

(iii) That though the police has taken the blood and simen of Prabhakar for analysis the same could not be matched with the semen of blood group 'B' which was found on the pettycot of the prosecutrix. In this connection, semen group of accused no.3 was found to be blood group 'B'.

(iv) In her substantial evidence before the Court, Pramila talked about accused no.1 raping her once.

This story was not corroborated in the FIR. Wherein it was mentioned that accused no.1 raped her twice.

(v) In her substantial evidence before the Court, Pramila stated that accused no.1 slept with her through out night. This was omission in the police statement.

(vi) In medical examination smegma was found only on the penis of accused no.1 Prabhakar. It is true that this examination took place after about 18 hours. However, Modi on medical evidence states that smegma forms within 24 hours.

(vii) The medical evidence of accused no.1 indicated that he had multiple painful ulcers seen over glans penis. The possibility of his indulging in sexual intercourse when he had multiple painful ulcers on his glans penis is doubtful. It appears that painful ulcers were caused by venereal disease.

9. In so far as accused no.3 is concerned, I find that the version of the prosecution is acceptable though the offence will have to be changed from 376 (2) (g) to section 376 (1) of the IPC. In so far as he is concerned, the version given by the prosecutrix is not only corroborated by her own FIR but is also corroborated by the fact that the semen found on the petticoat of the prosecutrix was found

to be of group 'B' which was also the group of accused no.3. Apart from this on the next morning pettycoat of the prosecutrix was found by the police at the spot pointed out by the prosecutrix. The evidence of the prosecutrix is also corroborated by her own medical evidence which indicates that she had several injuries. (PW 5) Dr.Sahebrao Naval has spoken of the injuries found on her body and has described them as under :-

- (1) Contusion 3" x 2" on right knee joint.
- (2) Contusion 3" x 5" on left knee joint.
- (3) Contusion 1" x 1" on left elbow joint.
- (4) Multiple minor contusion of variable sizes on back.
- (5) Minor scratch on right breast
- (6) Multiple minor contusion of variable sizes on both gluteal region.

. He also found that the breast were of adult type. Pubic Hairy of adult type was present. Pubic hairs were seen to be matted and on left side of labia majora, white coloured stains were seen. Labia majora was found congested. Hymen was found torn anular in shape, congested, admitting one finger, tender. Vagina was found congested, tender, admitting middle finger with thick whitish liquid present on posterior fornix.

. Though initially he had reserved his opinion till the receipt of C.A.report, in his substantial evidence he opined that Pramila had been raped. Accused no.3 was also named in the FIR by the prosecutrix.

10. In the net result, the conviction and sentence of accused no.1 Prabhakar Daulat Pawar under Section 366 of IPC is maintained. The conviction of accused no.1 Prabhakar Daulat Pawar under Section 376 (2) (g) of IPC and the sentence imposed on him on this ground is set aside. The conviction of accused no.3 Baliram Shankar Pawar for an offence under Section 376 (2) (g) is modified and he is convicted under Section 376(1) of IPC and on this count, he is sentenced to suffer RI for 8 years and to pay fine of Rs.1000/- in default, to suffer RI for one month. Both the accused will be entitled for set off given to them for the period they were in jail during the trial. All the sentences to run concurrently. The appeal stands partly allowed accordingly. The bail bonds of the accused are cancelled and they are directed to surrender to the concerned police station forthwith.

(R.S.MOHITE, J)